

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-1103

To be argued by
THOMAS F. MAXWELL, JR.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1103

UNITED STATES OF AMERICA,

Appellee,

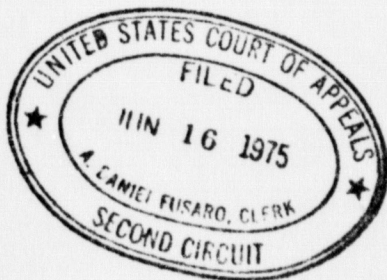
—v.—

MARGARET SAMUEL,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE APPELLEE



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Statute Involved

18 U.S.C. § 1708 provides in pertinent part:

. . . Whoever . . . unlawfully has in his possession, . . . mail, or any article or thing contained therein, which has been so stolen, . . . knowing the same to have been stolen, . . . [Shall be fined . . . or imprisoned . . . or both.]



**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 75-1103

UNITED STATES OF AMERICA,

Appellee,

—v.—

MARGARET SAMUEL,

Appellant.

BRIEF FOR THE APPELLEE

Statement of the Case

A Federal Grand Jury at Bridgeport, Connecticut, returned an indictment (Criminal No. B-74-39) on May 23, 1974, charging Margaret Samuel with nine counts of possession of stolen mail, in violation of Title 18 U.S.C. § 1708. On June 6, 1974, Samuel pleaded not guilty to all counts of the indictment.

On September 5, 1974, Samuel filed a Motion to Stay the Proceeding, To Strike the Jury Panel, and for a Supplemental Order Concerning Selection of Prospective Petit Jurors. This motion was denied on November 25, 1974, by the court (Newman, J.).

On November 25, 1974, a jury was impaneled to hear the case. On December 3, 1974, the presentation of evidence commenced and the trial continued until December 5, 1974, when the jury was charged. The jury returned a verdict of guilty on all counts of the indictment.

On March 7, 1975, Samuel was sentenced to a term of imprisonment of one year, execution of sentence suspended after sixty days, and she was placed on probation for two years. Defendant is presently on bond pending appeal. Samuel filed a timely notice of appeal.

Statement of Facts

Daisy Langston was receiving aid from the Connecticut Welfare Department in the fall of 1972 and she was residing at 555 Trumbull Avenue, Bridgeport, Connecticut. [This was Building #11 in the Beardsley Terrace apartment complex] (Tr. 5).^{*} Her welfare checks came by mail and she did not receive her check [Exhibit 1] on November 1, 1972 (Tr. 6, 9). This check was cashed at the Stratford Avenue Branch of the City National Bank [hereinafter C.N.B.] on November 1, 1972 (Tr. 37, 39, 40). Langston did not endorse this check, nor did she authorize anyone else to endorse it (Tr. 7).

Shirley Coltrane, formerly Shirley Woods, lived at the same address as Daisy Langston in the fall of 1972 (Tr. 12). She too was receiving assistance from the State of Connecticut and her checks came via the United States Mail (Tr. 13). She did not receive her welfare checks for November 1, 1972, [Exhibit 2] and December 1, 1972 [Exhibits 6 and 7] (Tr. 13).¹ The defendant, Margaret Samuel, lived in the same building as Shirley Woods [555 Trumbull Avenue] in the fall of 1972 (Tr. 17, 181 and 184). Each of these checks was cashed at the C.N.B. on November 1, 1972 [Exhibit 2], and December 1, 1972 [Exhibits 6 and 7] (Tr. 45, 46 and 47). Coltrane did not

^{*} References to the trial transcript are designated "Tr."

¹ Shirley Woods was receiving two types of aid from the State of Connecticut; hence she would have received two Welfare checks on December 1, 1972 (Tr. 12).

endorse these checks, nor did she authorize anyone to endorse them for her (Tr. 15).

Doris Lindsay was another resident of the Beardsley Terrace apartments who was receiving Welfare checks from the State of Connecticut in the fall of 1972 and winter of 1973 (Tr. 21, 22). Two of the Welfare checks [Exhibits 3 and 4] which she did not receive and did not authorize anyone to endorse on her behalf were cashed on November 16, 1972 [Exhibit 3] and December 1, 1972 [Exhibit 4] at C.N.B. (Tr. 47). The other Welfare check [Exhibit 8] Lindsay did not receive was cashed at Mr. Jerry's Ltd., a clothing store in Bridgeport, Connecticut. This check was used to purchase a gentleman's suit (Tr. 58-59). A woman paid for this suit and the salesman, Charles Milton, observed this woman write the second endorsement on the back of the check [Exhibit 8]. This endorsement read: "Doris Lindsay, 455 Trumbull Avenue" (Tr. 61).

Another Welfare recipient, Susie Pettus, of 455 Trumbull Avenue, Bridgeport, Connecticut, did not receive her check [Exhibit 5] in the mail on December 1, 1972 (Tr. 28, 29). This check was cashed on December 1, 1972, at C.N.B. (Tr. 47). Pettus had not authorized anyone to endorse her signature (Tr. 30).

Lindora Barnes of 555 Trumbull Avenue, Bridgeport, Connecticut, did not receive her Welfare check [Exhibit 9] in the mail on October 1, 1972. This check was cashed at the Bridgeport office of the Connecticut Bank and Trust Company on October 2, 1972 (Tr. 78). The bank had a surveillance camera and prints made from the film [Exhibits 11-14] (Tr. 73-78) show a black female cashing this check. The teller that handled the transaction recalled observing this person endorse the check [Exhibit 9] in his presence (Tr. 79-81). A latent fingerprint of the defendant's left thumb was identified on this check [Exhibit 9] by a fingerprint expert from the United States Postal Service Crime Laboratory (Tr. 118-119, 115). This fingerprint expert further stated that a person must touch an object for their fingerprint to be on it (Tr. 131-132).

The Chief of the Division of Money Disbursement, Connecticut Welfare Department, Edward Podhajski, stated that all of the checks [Exhibits 1-9] were sent to the payees by the U.S. Mail (Tr. 84-85, 87). The Welfare Department's procedure was to place the checks in the mail so that they arrived at the payee's address on the date the check was dated (Tr. 89).

Hugh Sang, a handwriting expert, formerly Assistant Director of the United States Postal Service New York Crime Laboratory, eliminated the payees of the checks [Exhibits 1-9] as having written the endorsements on the back of those checks (Tr. 136-137, 143). He concluded the endorsements on the back of the checks [Exhibits 1-9] were written by the same person who gave the handwriting exemplars contained in Exhibit 16 (Tr. 144). Margaret Samuel was the individual who gave the handwriting exemplars [Exhibit 16] (Tr. 100-102). He [Sang] further stated, that both of the endorsements on the back of Exhibit 8 [Lindsay's check] were written by the person who provided the handwriting exemplars, Exhibit 16 (Tr. 153-154).

The defendant, Margaret Samuel, testified in her own behalf and denied ever endorsing the checks, possessing them, or touching them (Tr. 175-176, 184).

Questions Presented

- I. Was there sufficient evidence to find the defendant guilty beyond a reasonable doubt?
- II. Did the Court properly charge the jury concerning the inference which may be drawn from the unexplained possession of recently stolen property and the elements of the offense charged?
- III. Does the jury selection plan for the District of Connecticut violate Title 28 U.S.C. § 161 and § 162?

ARGUMENT

I.

There was substantial evidence to support the defendant's conviction.

Samuel contends that the Government's evidence was insufficient to support her conviction. This contention is clearly without merit. Viewing the evidence on appeal in the light most favorable to the Government, as this Court must, *Glasser v. United States*, 315 U.S. 60, 80 (1942); *United States v. Brasco*, — F.2d — (2nd Cir. May 21, 1975) Slip Op. 3619; *United States v. Koss*, 506 F.2d 1103, 1106 (2nd Cir. 1974), there was substantial evidence for the jury to find that Samuel possessed nine different State of Connecticut Welfare checks which had been stolen from the mail in violation of 18 U.S.C. § 1708.

The evidence showed that five different Welfare recipients [hereinafter called payees] were receiving aid from the State of Connecticut Welfare Department in the fall of 1972 and winter of 1973. Each of these payees lived at 455 [Building No. 10] or 555 [Building No. 11] Trumbull Avenue, Bridgeport, Connecticut, also known as Beardsley Terrace Apartments, and the defendant lived at 555 Trumbull Avenue [Building 11], Bridgeport, Connecticut.

All of the payees received their welfare checks through the mail at their mailbox located in the lobby of the building where they lived. The payees did not receive a total of nine welfare checks [Exhibits 1-9] on the dates they were suppose to receive them and they did not authorize anyone to endorse their signatures upon these checks. The checks [Exhibits 1-7] were all cashed on the day they were dated at C.N.B. with the exception of Exhibit 9 which was cashed at the Connecticut Bank and Trust Company one day after it was dated, and one check [Exhibit 8] which was cashed

at Mr. Jerry's Ltd. some fifteen to twenty days after it was dated.

On the back of each cashed check was the forged endorsement of the payee. Samuel was identified by a handwriting expert as having written the endorsement [both endorsements on Exhibit 8] on the back of each check. In addition, Samuel's fingerprint was found on the back of one check [Exhibit 9] and she was shown cashing this check on the Connecticut Bank and Trust Company's surveillance camera.

Each of the checks was in fact mailed to the payee at their proper address by the Welfare Department of the State of Connecticut through the United States mails. These checks were mailed so that they would arrive at the payee's address on the date the checks were dated.

Those facts justified the jury finding that each of the checks [Exhibits 1-9] was stolen from the United States mails; that they were in Samuel's unlawful possession; and that she knew the checks were stolen. See *Barnes v. United States*, 412 U.S. 837, 845 (1973); *United States v. Ellison*, 469 F.2d 413, 415 (9th Cir. 1972); *United States v. Powell*, 453 F.2d 885 (6th Cir. 1972), cert. den. 406 U.S. 960; *United States v. Lopez*, 457 F.2d 396, 398 (2nd Cir. 1972), cert. den. 409 U.S. 866; *United States v. Kimbell*, 487 F.2d 219, 221 (5th Cir. 1973); *United States v. Morgan*, 483 F.2d 435 (10th Cir. 1973); *Webb v. United States*, 347 F.2d 363, 364 (10th Cir. 1965); and *United States v. Hines*, 256 F.2d 561 (2nd Cir. 1958).

Samuel's contention that the address on one of the checks [Exhibit 7] (App. 24) is an insufficient address is incorrect. Samuel claims that "555 Trumbull Avenue" is a large apartment complex containing at least 11 buildings each with 64 families. This claim is not correct. "555 Trumbull Avenue is Building 11 within the Beardsley Ter-

race Apartments, and "455 Trumbull Avenue" is Building 10 within the same building complex. (Tr. 12a, 21a) Therefore, this check addressed to Shirley Woods at 555 Trumbull Avenue, Bridgeport, Connecticut, was properly addressed and a more than sufficient address for the postman to be able to deliver it. See *United States v. Hines, supra*, at 564.

II.

The trial court's instruction to the jury was a correct statement of the law concerning possession of stolen mail and the inference that the jury may draw from the unexplained possession of stolen property.

Neither party submitted written requests to charge (1a)* and both parties were in agreement as to the elements of the offense, i.e. possession of stolen mail. (2a) At the conclusion of the court's charge the defendant took exception to those portions of the charge wherein the court charged the jury that it was unnecessary for the jury to find the defendant was the person who stole the checks from the mail and "[t]he inference of knowledge . . . from the recent possession of stolen property." (17a)

The trial court instructed the jury that the following three elements must be proved beyond a reasonable doubt before there could be a conviction on any count of the indictment:

First, that the check had been stolen from the U.S. Mails (sic); second, that the defendant unlawfully possessed it; and third, that the defendant knew that the check had been stolen. (8a)

* References to Appellee's Appendix are designated "—a".

This was a proper instruction concerning the essential elements of the charge of possession of stolen mail in violation of 18 U.S.C. § 1708. The statute [18 U.S.C. § 1708] only requires knowledge that the property was stolen and not knowledge that the property was stolen from the mail. *Barnes v. United States*, *supra*, at 847; *United States v. Hines*, *supra*, at 563.

The trial court charged the jury concerning the inference that they may draw from possession of recently stolen property (11a-12a). The trial court's charge was virtually identical with the charge the Supreme Court approved of in *Barnes* at 840 n. 3. In *Barnes*, the Court also rejected a contention similar to Samuel's that the trial court's instruction on the inferences a jury may draw violates the defendant's right under the Fifth Amendment. *Id.* at 846-847.

All of the inferences that the trial court instructed the jury they might draw were amply supported by the evidence. Each of the checks [Exhibits 1-9] was properly addressed and deposited in the United States mails. There was ample evidence in view of the dates on which the checks were cashed from which the jury was able to find the defendant was in recent possession of the checks. This did not result in the piling of inference upon inference and Samuel did not and has not presented any circumstances consistent with innocence to show that the trial court's instructions concerning the inferences that they [the jury] might draw was error. Cf. *United States v. Brawer*, 482 F.2d 117, 129-130 (2d Cir. 1973).

III.

The jury selection process utilized in the New Haven Division of the District of Connecticut satisfies in all respects the requisites of the Jury Selection and Service Act.

The specific question of the validity of the jury selection procedures in effect in New Haven have previously been ruled upon and approved by this court. *United States v. Jenkins*, 496 F.2d 57 (2d Cir. 1972), *cert. denied*. — U.S. — (Feb. 11, 1975). Samuel has adopted the record of *United States v. Gonzalez*, Criminal No. B-115 (D. Conn. May 22, 1974) for the purposes of the issues and data presented therein. This court has had occasion to review the record of *Gonzalez* in *United States v. Simmons, Haskins and Alston*, Criminal No. N-74-65 (D. Conn. November 13, 1974), *aff'd* in open court (2d Cir. March 31, 1975). The jury selection practices in New Haven were once again raised in *In re Grusse and Turgeon*, Civil No. N-75-42 (D. Conn. Feb. 19, 1975) and Judge Newman, relying specifically on *Jenkins* and *Gonzalez* upheld the jury selection practices. That opinion has also been affirmed by this court. *United States v. Grusse*, — F.2d — Slip Op. 2039, (Feb. 27, 1975).

Samuel's claim that the jury was selected in violation of the Jury Selection and Service Act [28 U.S.C. § 1862 et seq] is without merit.

CONCLUSION

The defendant received a fair trial completely free of error, and it is respectfully urged that the defendant's conviction in the District Court be affirmed.

Respectfully submitted,

PETER C. DORSEY,
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THOMAS F. MAXWELL, JR.,
Assistant United States Attorney



United States Court of Appeals
FOR THE SECOND CIRCUIT

No. 75-1103

UNITED STATES OF AMERICA

Appellee

v.

MARGARET SAMUEL

Appellant

AFFIDAVIT OF SERVICE BY MAIL

Albert Sensale, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 914 Brooklyn Ave
Brooklyn, N.Y.

That on the 16th day of June, 1975, deponent served the within Brief and Appendix for the Appellee
upon Gregory Craig, Esq.
Federal Public Defender
770 Chapel Street, New Haven, Connecticut 06510

Attorney(s) for the Appellant in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Sworn to before me,

Albert Sensale

This 16th day of June

1975

Shirley Amaker
SHIRLEY AMAKER
Notary Public, State of New York
No. 24 - 4502766
Qualified in Kings County
Commission Expires March 30, 1977